

Restriction Between Inventions of Group I and Group II.

The Examiner states that the inventions of Groups I and II are related as combination and subcombination. The Examiner states that the invention of Group I is classified in class 342, subclass 159, and the invention of Group II is classified in class 342, subclass 82.

Restriction is believed not to be proper between the invention of Group I and the invention of Group II in this application for the reason that the search and examination of the entire application can be made without serious burden, even though it includes claims to independent or distinct inventions.

“There are two criteria for a proper requirement for restriction between patentably distinct inventions:

(A) The inventions must be independent or distinct as claimed;
and

(B) There would be a serious burden on the examiner if restriction is not required.”

MPEP §803 (citations omitted). The Office Action nowhere states that there would be a serious burden on the Examiner if restriction is not required. Accordingly, the Office Action fails to meet the minimum requirements for a restriction requirement. The absence of a serious burden is shown by the fact that the Examiner issued the Office Action of July 29, 2005, rejecting claims 1-2 and 4-6, and objecting to claim 3. Applicant's response traversed the rejections and did not amend any claims. The MPEP even indicates that it would be unusual for a serious burden to be found after the first action on the merits on the same claims. “Before making a restriction requirement after the first action on the merits, the examiner will consider whether there will be a serious burden if restriction is not required.” MPEP §811. Further, both the

invention of Group I and the invention of Group II are stated by the Examiner to be classified in class 342.

Restriction of Group I Between Invention III and Invention IV

The Examiner has required further restriction of Group 1 between claim 1 (Invention III) and claims 2-3 (Invention IV). The Examiner states that Inventions III and IV are related as subcombinations disclosed as usable together in a single combination. The Examiner states that subcombination IV has separate utility such as reducing interference between long and short range subpulses which is not required or needed in subcombination III.

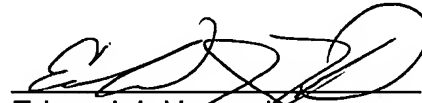
The Office Action nowhere states that there would be a serious burden on the Examiner if restriction is not required. Accordingly, the Office Action fails to meet the minimum requirements for a restriction requirement. The absence of a serious burden is shown by the fact that the Examiner issued two Office Actions rejecting claims 1-2 and objecting to claim 3. Applicant responded to both Office Actions by traversing the rejections, and did not amend any of claims 1-3. The MPEP even indicates that it would be unusual for a serious burden to be found after the first action on the merits on the same claims. "Before making a restriction requirement after the first action on the merits, the examiner will consider whether there will be a serious burden if restriction is not required." MPEP §811. Further, both Invention III and Invention IV are stated by the Examiner to be classified in class 342.

CONCLUSION

Applicant believes he has addressed all outstanding grounds raised by the Examiner and respectfully submits the present case is in condition for allowance, early notification of which is earnestly solicited.

Should there be any questions or outstanding matters, the Examiner is cordially invited and requested to contact Applicant's undersigned attorney at his number listed below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Edward J. Howard', written over a horizontal line.

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